IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14416 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRASINH C RAJPUT THRO' MOHANSINH B RAJPUROHIT

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 14416 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against the detenu by the Police Commissioner, Surat City on 12.3.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The detenu is declared as 'dangerous person.'

The grounds served upon the detenu and placed on record reveal that the detaining authority took into consideration six offences came to be registered against the detenu under sec. 380, 457, 379 and 114 of IPC for the theft of clothes and saris from shops. The offences came to be registered against the detenu on 10.10.2002, 27.12.2002, 21.1.2003, 8.2.2003, 25.3.2003 and 22.2.2003. The detaining authority also took into consideration the two statements recorded by the sponsoring authority in-camera on 8.3.2003 as verified by the detaining authority on 11.3.2003 revealing incidents of 17.12.2003 and 21.12.2003. The detaining authority, from the above material passed the order impugned in this petition.

Heard ld. advocate Mr. Kamen Shukla for Mr AS Dave for the petitioner and Ms. Panchal ld. AGP for the respondents at length.

Out of various contentions raised and controverted on behalf of the respondents, the matter can be disposed of on the ground whether there was any material before the detaining authority indicating that the activities of the detenu were prejudicial to the maintenance of public order. So far as the six offences registered against the detenu under sec. 457, 379, 380 and 114 of IPC which could be hardly said that by registration of such offences the activities of the detenu can be labelled as prejudicial to the maintenance of pubic order. While the incidents revealed in in-camera statements, on going through carefully, it appears that the witnesses have stated individual disputes instead of revealing the activities of the detenu to the length, magnitude and intensity to disturb the public order. The incidents which occurred on 21.12.2002, the witness stated that the witness was stationed at Market Chowk, in Salabatpura with his vehicle, the detenu and his associates approached him and conveyed that witness should reach to Kohinoor market from where the goods of the detenu were to be loaded in the vehicle of the detenu. The witness knew that the detenu was indulging in the activities of theft and hence he refused to act accordingly. Therefore, the detenu and his associates threatened the witness and ultimately started beating him. Though the crowd was gathered but none rescued the witness because of the threat of the

detenu and his associates. One of the associate took out sum of Rs. 875/- from the pocket of the witness. The other incident which witness referred is of 17.12.2002, wherein it is alleged that the detenu and his associates forced the witness to give information to the detenu about Sari shops of the area particularly opening and closing of such shops. The witness alleged that he knew that the detenu was involved in theft activities and, therefore, he refused. On refusal, the detenu and his associates were instigated and started beating the witness. Though the crowd was gathered but due to threat of the detenu and his associates, the crowd was disbursed and one of the associate of the detenu took out the sum of Rs. 1275/- from the pocket of the witness. When both the incidents are scrutinised broadly, it clearly transpires that these are not the incidents involving the pubic at large or a section of society in respect of disturbance of public order. There is no other material on record to come to the conclusion that the activities of the detenu were prejudicial to the maintenance of pubic order. In this view of the matter, the order impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 12.3.2003 by the Police Commissioner, Surat city, under the PASA Act against the detenu is quashed and set aside. The detenu Mahendrasinh Chandansinh Rajput is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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